

AGREEMENT  
BETWEEN  
MEMPHIS AND SHELBY COUNTY GOVERNMENT  
AND  
MEMPHIS REGIONAL CHAMBER

This Agreement, made and entered into this     day of \_\_\_\_\_, 2009 by and between Shelby County Government party of the first part, herein referred to as “COUNTY”, the City of Memphis, herein referred to as “CITY”, and Memphis Regional Chamber whose office is located at 22 North Front Street, Memphis, Tennessee 38103, party of the second part, herein referred to as “CHAMBER”, for the purpose of facilitating economic development in Memphis and Shelby County.

WITNESSETH:

WHEREAS, The City and COUNTY desire to facilitate Economic Development in Memphis and Shelby County; and

WHEREAS, it is in the best interest of the CITY and COUNTY to continue the tasks originally outlined in the Memphis 2005 Economic Development Strategic Plan and components of the new initiative of the Memphis Regional Chamber which build on this Plan including a Metro Strategy, Talent Strategy and a Regional Strategy; and

WHEREAS, This agreement will provide funds for services for Economic Development, Community Development and Research; and

WHEREAS, the CITY and COUNTY are authorized to enter into this Agreement; and

WHEREAS, the CHAMBER has the credentials, capabilities, experience, personnel, and abilities required to undertake the Scope of Work in the required time frame; and

WHEREAS, the CHAMBER is agreeable to undertake the professional services as outlined in the attached Scope of Services and under conditions and fees satisfactory to the CITY and the COUNTY.

NOW, THEREFORE, in consideration of these premises and of the mutual covenants herein set forth, it is agreed by and between the parties hereto as follows:

The CITY and COUNTY agrees to employ the CHAMBER and the CHAMBER agrees to provide the services as outlined in the Scope of Services. The CITY and COUNTY agrees to pay the CHAMBER compensation for having rendered such services, as described herein.

## SECTION II. CHAMBER'S SERVICES

The services to be provided in connection with the Agreement will include those items listed in the attached CHAMBER'S Scope of Services, incorporated herein as ATTACHMENT A.

## SECTION III. TIME OF BEGINNING AND COMPLETION

The term of this Contract will begin on the 1<sup>st</sup> day of July, 2009 and shall extend through June 30, 2010.

The CHAMBER agrees to begin work on the Project within five (5) calendar days after receiving written authorization to proceed with the Project as authorized by the CITY and COUNTY through the Director of the Memphis and Shelby County Division of Planning and Development. The CHAMBER agrees to prosecute each of its assignments in an orderly and expeditious manner, on a schedule mutually agreed upon between the CHAMBER and the Division of Planning and Development. CHAMBER shall submit quarterly progress reports indicating progress made on the Scope of Services

## SECTION IV. PAYMENT AND CHANGES

For the satisfactory performance of all services, and including the assumptions of all responsibilities and obligation contained in and throughout this Agreement, the CITY and COUNTY agrees to pay, and the CHAMBER agrees to accept, as full compensation, fees as outlined hereinafter. Payments shall be provided in two equal payments beginning July 1, 2009 and the remainder on January 1, 2010.

### COMPENSATION

For satisfactory performance of services rendered in accordance with the terms of this Agreement, the CITY and COUNTY shall compensate the CHAMBER, based on invoices and progress reports submitted by the CHAMBER.

In no event shall the liability of CITY AND COUNTY under this agreement exceed ONE HUNDRED SEVENTY-FIVE THOUSAND AND 00/100 (\$175,000.00) Dollars each for a total of THREE HUNDRED AND FIFTY THOUSAND AND 00/100 (\$350,000.000).

### METHOD OF PAYMENT

. Invoices shall be submitted on July 1, 2009 and January 1, 2010 and shall reflect the total of any previous payments. The CITY and COUNTY shall pay the amount which is due and payable within thirty (30) days of its approval of each invoice. The making of any partial payments by the CITY and COUNTY and the receipt thereof by the CHAMBER shall not constitute acceptance of the Project or of any portion thereof, and shall not lessen any obligation of the CHAMBER under this Agreement, including, but not limited to replacing or correcting work which does not conform to this Agreement, though the character of such work may not have been apparent or detected at the time such payment was made.

## SECTION V. MISCELLANEOUS PROVISIONS

The CHAMBER, and the CITY and COUNTY mutually agree as follows:

### 1. CONTROL

All services by the CHAMBER will be performed in a manner satisfactory to the CITY and the COUNTY, and in accordance with the generally accepted business practices and procedures of same.

### 2. INDEPENDENT STATUS

Nothing in this Agreement shall be deemed to represent that the CHAMBER, or any of the CHAMBER'S employees or agents, are the agents, representatives, or employees of the CITY or the COUNTY. The CHAMBER will be an independent contractor over the details and means for performing its obligations under this Agreement. Anything in this Agreement which may appear to give the CITY or the COUNTY the right to direct the CHAMBER as to the details of the performance of its obligations under this Agreement or to exercise a measure of control over the CHAMBER is solely for purposes of compliance with local, state and federal regulations and means that the CHAMBER will follow the desires of the CITY and COUNTY only as to the intended results of the scope of this Agreement.

It is further expressly agreed and understood by the CHAMBER that neither it nor its employees or agents are entitled to any benefits which normally accrue to employees of the CITY or the COUNTY; that the CHAMBER has been retained by the CITY and COUNTY to perform the services specified herein (not hired) and that the remuneration specified herein is considered fees for services performed (not wages) and that invoices submitted to the CITY and COUNTY by the CHAMBER for services performed shall be on the CHAMBER'S letterhead.

### 3. REPORTS

CHAMBER shall submit quarterly progress reports indicating progress made on the Scope of Services. The CHAMBER shall prepare and submit quarterly reports of its activities, funded under this Agreement, to the Division of Planning and Development. The quarterly reports and all books of account and financial records that are specific to the work performed in accordance with this Agreement may be subject to audit by the Director of the Division of Administration and Finance. The CITY and COUNTY shall have the right to withhold future disbursement of funds under this Agreement and any future Agreements until this provision has been met.

### 4. TERMINATION OR ABANDONMENT

It shall be cause for the immediate termination of this Agreement if, after its execution, the CITY or COUNTY determines that either the CHAMBER or any of its principals, partners or corporate officers, if a corporation, including the corporation itself, has plead nolo contendere, or has plead or been found guilty of a criminal violation, whether state or federal, involving, but not limited to, governmental sales or purchases, including but not limited to the rigging of bids, price fixing, or any other collusive

and illegal activity pertaining to bidding and governmental contracting.

It shall be cause for the immediate termination of this Agreement if, after its execution, the CITY or COUNTY determines that the CHAMBER subcontracted, assigned, delegated, or transferred it rights, obligations or interests under this Agreement without the CITY and COUNTY'S consent or approval.

It shall be cause for the immediate termination of this Agreement if, after its execution, the CITY and COUNTY determine that the CHAMBER files bankruptcy, becomes insolvent or makes an assignment for the benefit of creditors, or a receiver, or similar officer is appointed to take charge of all or part of the CHAMBER assets.

The CITY and COUNTY may terminate the Agreement upon five (5) days written notice by the CITY and COUNTY or its authorized agent to the CHAMBER for the CHAMBER'S failure to provide the services specified under this Agreement. This Agreement may be terminated by either party by giving thirty (30) days written notice to the other, before the effective date of termination. In the event of such termination, the CHAMBER shall be entitled to receive just and equitable compensation for any satisfactory work performed as of the termination date; however, the CHAMBER shall not be reimbursed for any anticipatory profits that have not been earned as of the date of termination.

All work accomplished by the CHAMBER prior to the date of such termination shall be recorded and tangible work documents shall be transferred to and become the sole property of the CITY and COUNTY prior to payment for services rendered.

Notwithstanding the above, the CHAMBER shall not be relieved of liability to the CITY and COUNTY for damages sustained by the CITY and COUNTY by virtue of any breach of the Agreement by the CHAMBER and the CITY and COUNTY may withhold any payments to the CHAMBER for the purpose of setoff until such time as the exact amount of damages due the CITY and COUNTY from the CHAMBER is determined.

#### 5. SUBCONTRACTING, ASSIGNMENT OR TRANSFER

Any subcontracting, assignment, delegation of transfer of all or part of the rights, responsibilities, or interest of either party to this Agreement is prohibited unless by written consent of the other party.

#### 6. CONFLICT OF INTEREST

The CHAMBER covenants that it has no public or private interest, and will not acquire directly or indirectly any interest which would conflict in any manner with the performance of its services. The CHAMBER warrants that no part of the total agreement amount provided herein shall be paid directly or indirectly to any officer or employee of the CITY or COUNTY as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor or CHAMBER to the CHAMBER in connection with any work contemplated or performed relative to this Agreement.

#### 7. COVENANT AGAINST CONTINGENT FEES

The CHAMBER warrants that it has not employed or retained any company or person other than

a bona fide employee working solely for the CHAMBER, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CHAMBER any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the CITY and COUNTY will have the right to recover the full amount of such fee, commission, percentage, brokerage fee, gift, or other consideration.

#### 8. EMPLOYMENT OF CITY AND/OR COUNTY WORKERS

The CHAMBER will not engage, on a full or part-time, or other basis during the period of the Agreement, any professional or technical personnel who are or have been at any time during the period of the Agreement in the employ of the CITY and/or COUNTY.

#### 9. ACCESS TO RECORDS

During all phases of the work and services to be provided under this Agreement, the CHAMBER agrees to permit duly authorized agents and employees of the CITY and/or COUNTY, to enter the CHAMBER's offices for the purpose of inspections, reviews and audits during normal working hours. Reviews may also be accomplished at meetings that are arranged at mutually agreeable times and places.

The CHAMBER will maintain all books, documents, papers, accounting records, and other evidence pertaining to the fee paid under this Agreement and make such materials available at their offices at all reasonable times during the period of this Agreement and for three (3) years from the date of payment under this Agreement for inspection by the CITY and/or COUNTY or by any other governmental entity or agency participating in the funding of this Agreement, or any authorized agents thereof; copies of said records to be furnished if requested.

#### 10. ARBITRATION

Any dispute concerning a question of fact in connection with the work not disposed of by agreement between the CHAMBER and the CITY AND COUNTY will be referred to the CITY and/or COUNTY Contract Administrator or his/hers duly authorized representative, whose decision regarding same will be final.

#### 11. RESPONSIBILITIES FOR CLAIMS AND LIABILITIES

The CHAMBER shall indemnify, defend, save and hold harmless the CITY and the COUNTY, and its elected officials, officers, employees, agents, assigns, and instrumentalities from and against any and all claims, liability, losses or damages—including but not limited to Title VII and 42 USC 1983 prohibited acts—arising out of or resulting from any wrongful conduct; whether actions or omissions; whether intentional, unintentional, or negligent; whether legal or illegal; or otherwise that occur in connection with or in breach of this Agreement or in the performance of the duties hereunder, whether performed by the CHAMBER or its subcontractors, agents, employees or assigns. This indemnification shall survive the termination or conclusion of this Agreement.

The CHAMBER expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the CHAMBER shall in no way limit the responsibility to

indemnify, defend, save and hold harmless the CITY and/or COUNTY or its elected officials, officers, employees, agents, assigns, and instrumentalities as herein provided.

The CITY and COUNTY have no obligation to provide legal counsel or defense to the CHAMBER or its subcontractors in the event that a suit, claim or action of any character is brought by any person not party to this agreement against the CHAMBER as a result of or relating to obligations under this Agreement.

Except as expressly provided herein, the CITY and/or COUNTY has no obligation for the payment of any judgment or the settlement of any claims against the CHAMBER as a result of or relating to obligations under this agreement. The CHAMBER shall immediately notify the CITY and COUNTY, c/o Shelby CITY and COUNTY Government, Contracts Administration, of any claim or suit made or filed against the CHAMBER or its subcontractors regarding any matter resulting from or relating to the CHAMBER's obligations under this Agreement and will cooperate, assist and consult with the CITY and COUNTY in the defense or investigation thereof.

## 12. GENERAL COMPLIANCE WITH LAWS

If required, the CHAMBER certifies that it is qualified or will take steps necessary to qualify to do business in the State of Tennessee and that it will take such action as, from time to time, may be necessary to remain so qualified and it shall obtain, at its expense all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Agreement.

The CHAMBER is assumed to be familiar with and agrees that at all times it will observe and comply with all federal, state, and local laws, ordinances, and regulations in any manner affecting the conduct of the work. The preceding shall include, but is not limited to, compliance with all Equal Employment Opportunity laws, the Fair Labor Standards Act, Occupational Safety and Health Administration (OSHA) requirements, and the Americans with Disabilities Act (ADA).

This Agreement will be interpreted in accordance with the laws of the State of Tennessee. By execution of this Agreement the CHAMBER agrees that all actions, whether sounding in Agreement or in tort, relating to the validity, construction, interpretation and enforcement of this Agreement will be instituted and litigated in the courts of the State of Tennessee, located in Shelby CITY and/or COUNTY, Tennessee, and in no other. In accordance herewith, the parties to this Agreement submit to the jurisdiction of the courts of the State of Tennessee located in Shelby County, Tennessee.

## 13. NONDISCRIMINATION

The CHAMBER hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Agreement or in the employment practices of the CHAMBER on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The CHAMBER shall upon request show proof of such nondiscrimination, and shall post in conspicuous places available to all employees and applicants notices of nondiscrimination.

#### 14. ENTIRE AGREEMENT

This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties as to the Project.

#### 15. AMENDMENT

This Agreement may be modified or amended, only if the amendment is made in writing and is signed by both parties. Such modification shall be effective only after receipt by CHAMBER of CITY and COUNTY'S notice to proceed.

#### 16. SEVERABILITY

If any provision of this Agreement is held to be unlawful, invalid or unenforceable under any present or future laws, such provision shall be fully severable; and this Agreement shall then be construed and enforced as if such unlawful, invalid or unenforceable provision had not been a part hereof. The remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such unlawful, invalid or unenforceable provision or by its severance here from. Furthermore, in lieu of such unlawful, invalid, or unenforceable provision, there shall be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such unlawful, invalid or unenforceable provision as possible.

#### 17. WAIVER OF CONTRACTUAL RIGHT

No waiver of any term, condition, default, or breach of this Agreement, or of any document executed pursuant hereto, shall be effective unless in writing and executed by the party making such waiver; and no such waiver shall operate as a waiver of either (a) such term, condition, default, or breach on any other occasion or (b) any other term, condition, default, or breach of this Agreement or of such document. No delay or failure to enforce any provision in this Agreement or in any document executed pursuant hereto shall operate as a waiver of such provision or any other provision herein or in any document related hereto. The enforcement by any party of any right or remedy it may have under this Agreement or applicable law shall not be deemed an election of remedies or otherwise prevent such party from enforcement of one or more other remedies at any time.

#### 18. MATTERS TO BE DISREGARDED

The titles of the several sections, subsections, and paragraphs set forth in this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

#### 19. SUBJECT TO FUNDING

This Agreement is subject to annual appropriations of funds by CITY and COUNTY Government. In the event sufficient funds for this Agreement are not appropriated by the CITY and/or

COUNTY Government for any of its fiscal period during the term hereof, then this Agreement will be terminated. In the event of such termination, the CHAMBER shall be entitled to receive just and equitable compensation for any satisfactory work performed as of the termination date.

## 20. INCORPORATION OF WHEREAS CLAUSES

The foregoing whereas clauses are hereby incorporated into this Agreement and made a part hereof.

## 21. OWNERSHIP AND DISCLOSURE OF REPORTS, DATA OR OTHER INFORMATION

Notwithstanding anything to the contrary contained herein or within any other document supplied to CITY and COUNTY by CHAMBER, CHAMBER understands and acknowledges that CITY and/or COUNTY is a governmental entity subject to the laws of the State of Tennessee and that any reports, data or other information supplied to CITY and/or COUNTY by CHAMBER due to Services performed pursuant to this Agreement will immediately become the property of the CITY and/or COUNTY on behalf of Memphis and Shelby County Division of Planning and Development its member entities and as such are subject to being divulged as a public record in accordance with the laws of the State of Tennessee.

The CHAMBER agrees that all reports, studies, plans, models, drawings, specifications, and any other information or data of any type produced under this Contract, whether or not the same is accepted or rejected by CITY and COUNTY, shall remain the property of CITY and COUNTY on behalf of the Memphis and Shelby County Division of Planning and Development and shall not be published by the CHAMBER or any other party without the express prior consent of The Memphis and Shelby County Division of Planning and Development. In implementing the foregoing, the CHAMBER hereby grants and assigns to CITY and/or COUNTY rights to use and publish any and all of such reports, studies, plans, models, drawings, specifications, and other information or data. The signing of this Agreement shall constitute a transfer of ownership, and copyright of all documents from CHAMBER to CITY and COUNTY upon completion of the Project, excluding information previously developed by the CHAMBER.

All information owned, possessed or used by CHAMBER which is communicated to, learned, developed or otherwise acquired by the CHAMBER in the performance of the Services for CITY and COUNTY, which is not generally known to the public, shall be confidential and CHAMBER shall not, beginning on the date of first association or communication between CITY and COUNTY and CHAMBER and continuing through the term of this Contract and any time thereafter, disclose, communicate or divulge, or permit disclosure, communication or divulgence, to another or use for CHAMBER's own benefit or the benefit of another, any such confidential unless required by law.

The CHAMBER shall obtain assurances similar to those contained in this subsection from persons, contractors and subcontractors retained by the CHAMBER. CHAMBER acknowledges and agrees that a breach by CHAMBER of the provisions of this section will cause CITY and COUNTY irreparable injury and damage. CHAMBER, therefore, expressly agrees that CITY and COUNTY shall be entitled to injunctive or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Contract.



## 22. ORGANIZATION STATUS & AUTHORITY

Organizational Status. The CHAMBER represents and warrants that it is a corporation, limited liability company, partnership, or other entity duly organized, validly existing and in good standing under the laws of the state of Tennessee; it has the power and authority to own its properties and assets and is duly qualified to carry on its business in every jurisdiction wherein such qualification is necessary.

Power and Authority. The execution, delivery and performance of this Agreement by the CHAMBER has been duly authorized by all requisite action and will not violate any provision of law, any order of any court or other agency of government, the organizational documents of the CHAMBERS, any provision of any indenture, agreement or other instrument to which the

CHAMBER is a party, or by which the CHAMBER's respective properties or assets are bound, or be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets.

## 23. INSURANCE REQUIREMENTS

CHAMBER will provide evidence of the following insurance coverage:

1. Commercial General Liability - Minimum limit of \$1,000,000 per occurrence single limit for bodily injury and property damage. CITY and COUNTY shall be named as additional insured.
2. Worker's Compensation. The CHAMBER will provide Worker's Compensation Coverage for all eligible employees in accordance with the laws of the State of Tennessee.
3. Automobile liability – Maximum limit of \$1,000,000 per occurrence on all owned, hired and non-owned autos. CITY and COUNTY to be named additional insured. All Policies will provide for 30 days written notice to CITY and COUNTY of cancellation or material change in coverage.

## 24. LIVING WAGE ORDINANCE

In accordance with County Ordinance Number 328 and City Ordinance 5185, commonly referred to as the Living Wage Ordinance, all persons/entities engaged in service contracts with the COUNTY and CITY, including but not limited to both prime and sub-contractors, shall pay a Living Wage to employees for all work performed on said service contract, as defined in the Living Wage Ordinance. Proof of such compensation must be evidenced as required in the Living Wage Ordinance.

## SECTION VI COMPENSATION FOR CORRECTIONS

No compensation shall be due or payable to CHAMBER pursuant to this Contract for any CHAMBER's Services performed by the CHAMBER in connection with effecting of corrections to the design of the Services, when such corrections are required as a direct result of negligence by the CHAMBER to

properly fulfill any of his obligations as set forth in this Contract.

IN WITNESS WHEREOF, the Parties hereto have affixed their hands and seals at Memphis and Shelby County, Tennessee, the day, month, and year first above written.  
(This Agreement executed in multiples)

CITY OF MEMPHIS

CHAMBER

By: \_\_\_\_\_  
Interim Mayor

By: \_\_\_\_\_  
Memphis Regional Chamber  
John Moore

APPROVED AS TO LEGAL FORM EFFICACY AND PROPRIETY

By: \_\_\_\_\_  
Contract Administrator and/or City Attorney

COUNTY OF SHELBY, TENNESSEE

By: \_\_\_\_\_  
A C Wharton, Jr., Mayor

APPROVED AS TO LEGAL FORM EFFICACY AND PROPRIETY

By: \_\_\_\_\_  
Contract Administrator and/or County Attorney

CORPORATE ACKNOWLEDGMENT

STATE OF \_\_\_\_\_

CITY AND/OR COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public in and for the said CITY and/or COUNTY, in the State aforesaid, duly commissioned and qualified, Personally appeared, \_\_\_\_\_, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same for the purposes therein contained.

WITNESS my hand and official seal at office this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Notary Public

My Commission Expires \_\_\_\_\_